



PLANNING COMMISSION STAFF REPORT SEPTEMBER 14, 2006

Project:	MISSION PIZZA DINNER THEATRE- (PLN2006-00360)
Proposal:	A request to consider a Planned District Minor Amendment to allow live musical entertainment from 7 p.m. to 10 p.m., Friday and Saturday evenings for dining customers at the Mission Pizza and Pub in the Ohlone Village Shopping Center.
Recommendation:	Approve, based on Findings and subject to Conditions of Approval
Location:	1572 Washington Boulevard in the Mission San Jose Planning Area. APN 513 062006200 (See aerial photo next page)
Area:	3,330 square foot restaurant space in a 39,000 sq. ft. building on a 4.55-acre lot.
People:	Phillip Willis, Applicant and Owner of Mission Pizza Greer Enterprises, Owner of Ohlone Center Scott Plambaeck, Staff Planner (510) 494-4437; splambaeck@ci.fremont.ca.us
Environmental Review:	This project is categorically exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act Section 15301, Class 1, Existing Facilities.
General Plan:	Neighborhood Commercial
Zoning:	Planned District, P-78-6(H)

EXECUTIVE SUMMARY:

The Planning Commission is being asked to consider a minor amendment to P-78-6 to allow live music from 7 p.m. to 10 p.m., Friday and Saturday evenings for the Mission Pizza and Pub restaurant in the Ohlone Village Shopping Center on Washington Boulevard near I-680. The applicant had originally requested to allow live music seven days a week, but after discussions with the building owner, the applicant is now requesting live music only on Friday and Saturday evenings. The request would, if approved, allow live music where operational conditions will be imposed to eliminate or mitigate adverse impacts the use may have on adjacent users and the public in general. Staff recommends approval of the proposed project based on the following proposal and analysis that the use should be conditionally approved at the site requested.



Figure 1: Aerial Photo (2002) of Project Site and Surrounding Area.

SURROUNDING LAND USES:

North:	Single-Family Residential
South:	Single-Family Residential
East:	Vacant lot and pet hospital
West:	Single-Family Residential

BACKGROUND AND PREVIOUS ACTIONS:

The City Council approved the Planned District for the Ohlone Village Shopping Center in 1979. The Planned District allows eating and drinking places (not to include drive-thru restaurants). The applicant has been operating the Mission Pub and Pizza at its current location for 18 years and providing live entertainment to dinner customers for 16 years. In March of 2006, the City received a code enforcement complaint from the building owner stating the applicant was providing live performances without a permit. The building owner has since withdrew the code enforcement complaint. However, staff advised the applicant that the existing Planned District does not permit live music and that an amendment to the Planned District would be required.

PROJECT DESCRIPTION:

A Planned District Minor Amendment is requested to allow live music for dinner patrons at Mission Pizza and Pub. The applicant is requesting that live music be allowed from 7 p.m. to 10 p.m., Friday and Saturday evenings. The type of music being performed is acoustic bluegrass and country music. The primary business for the property is the restaurant and there is no charge for the music.

Facility

The existing restaurant operates in a 3,330 square feet tenant space within a 39,000 square foot multi-tenant building. The restaurant is more than 200 feet from the closest residential property. The restaurant has 104 seats, including six bar stools. As shown on the site plan, the stage and platform is 8' x 16' and is 7" high.

Operation

The Mission Pizza and Pub restaurant is open 7 days a week, Monday thru Thursday 11:30 a.m. to 9:30 p.m., Friday 11 a.m. to 10 p.m., Saturday 11:30 a.m. to 10 p.m. and Sunday 11:30 a.m. to 9:30 p.m. The restaurant currently provides live music for its customers on the stage from 7 p.m. to 10 p.m. Friday and Saturday evenings. Music is provided free for restaurant patrons. Music is performed on the stage only (as shown on the site plan) and is not performed outside. The applicant is requesting that live music be permitted from 7 p.m. to 10 p.m., Friday and Saturday evenings.

The City has not received complaints from neighbors regarding the live music or the general operation of the restaurant.

PROJECT ANALYSIS:

General Plan Conformance:

The existing General Plan land use designation for the project site is Neighborhood Commercial. The proposed project is consistent with the existing General Plan land use designation for the project site because eating establishments are allowed in the Neighborhood Commercial Land Use designation. The live music is an accessory use to the restaurant.

Zoning Regulations:

The project site is zoned Planned District, P-78-6(H). The planned district lists specific uses allowed in the PD, including eating and drinking establishments. Planned Districts allows flexibility with site design and uses. Additional uses for the Planned District need to be approved by the Planning Commission. The existing restaurant is a permitted use and the live music is an accessory use to the primary use of the site, the restaurant. The proposed use is compatible with existing uses in the Ohlone Village Shopping Center. The list of approved uses for the Ohlone Village Shopping Center is enclosed as an informational item.

Circulation/Parking:

The live music use is not expected to draw additional traffic or demand for increased parking. The primary use of the tenant space is the restaurant, not live music. The Planned District was designed to accommodate parking for eating establishments. Therefore, approval of the project should not impact site or area circulation or parking.

Noise:

As described above, the current type of live music is acoustic blue grass and country. The applicant states that the noise level of the music allow for conversations and the answering of the telephones. The tenant space for the Mission Pizza and Pub is over 200 feet from the nearest residential neighborhood. Staff has not received noise complaints regarding the existing live music. Staff recommends that as a conditional of approval that all doors are kept closed during live performances and that if City staff receives complaints from residents or adjacent tenants, the Planning Director have the authority to reduce the hours and/or days of operation for the music.

Environmental Review:

This project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act Section 15301, Class 1, Existing Facilities.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 82 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on July 19, 2006 and September 1, 2006. A Public Hearing Notice was published by The Argus on Thursday, August 31, 2006.

Staff received several calls and two emails from residents concerned about noise and traffic impact. Staff has explained to those who called that music has been performed for 16 years on Friday and Saturday nights without complaints. In addition, allowing live music as part of the restaurant should not increase traffic or the demand for parking.

ENCLOSURES:***Exhibits:***

- Exhibit "A" Floor Plan
- Exhibit "B" Findings and Conditions of Approval

Informational Items:

1. Applicant Statement
2. Email from neighbors
3. Permitted uses in the Planned District

RECOMMENDATION:

1. Hold public hearing.
2. Find that this project has been determined to be exempt from environmental review pursuant to the guidelines of the California Environmental Quality Act Section 15301, Class 1, Existing Facilities.
3. Find PLN2006-00360 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report.
4. Approve PLN2006-00360, as shown on Exhibit "A", subject Findings and Conditions of Approval in Exhibit "B".

Exhibit "B"
FINDINGS AND CONDITIONS OF APPROVAL FOR
PLANNED DISTRICT MINOR AMENDMENT PLN2006-00360
Mission Pizza Dinner Theatre

FINDINGS

The findings below are made on the basis of information contained in the staff report to the Planning Commission dated September 14, 2006, incorporated herein.

1. The site is suitable and adequate for the proposed use because the use will be conducted in the existing restaurant within an area dedicated for live performances.
2. The proposed use would not have a substantial adverse effect on traffic circulation, the planned capacity of the street system or other public facilities or services because the use is not expected to produce additional traffic or create additional demand for parking beyond the demand for the existing restaurant.
3. The proposed use would not have a substantial adverse economic effect on nearby uses because the proposed use will be part of an existing restaurant and will be not incompatible with existing uses.
4. The proposed use would not have a substantial adverse impact on the general welfare of persons residing in the community because the proposed use is over two hundred feet from the closest residence and the music will be played inside an existing building.

CONDITIONS

- A-1 Approval of this Planned District Amendment, PLN 2006-00360, is based upon conformance with Exhibit "A", Site Plan and all conditions of approval.
- A-2 Live acoustical music is permitted from 7 p.m. to 10 p.m., Friday and Saturday evenings. Live music shall be only performed with dining. The applicant may not charge admission for the music.
- A-3 The music shall be no louder than at a level that allows conversation.
- A-4 If the Planning Director finds evidence that conditions of approval have not been fulfilled or that the use has resulted in a substantial adverse effect on the health, and/or general welfare of users of adjacent or proximate property, or have a substantial adverse impact on public facilities or services, the Director may refer the review of the permit to the Planning Commission at that time. If, upon such review, the Commission finds that any of the results above have occurred, the Commission may modify or revoke the use permit.
- A-5 Minor amendments to this Planned District Minor Amendment may be approved by the Planning Director if it is determined the overall intent of the Minor Amendment is fulfilled.

- A-6 If the Planning Director receives noise complaints, the Director shall have the authority to reduce the hours and/or the days that live music shall be permitted. The applicant may appeal the Director's decision to the Planning Commission.
- A-7 No outdoor entertainment or speakers are permitted. Doors to the restaurant must remain closed during performances.
- A-8 No loitering signs shall be posted with the letter of enforcement authorization on file with the police department.
- A-9 This approval is for this tenant space only (currently known as 1572 Washington Boulevard). Additional request for live music in other tenant spaces in the Planned District shall be subject to Planning Commission review.
- A-10 The applicant shall be responsible for all personnel costs and incidental expenses required to enforce these special conditions and/or mitigate violations of these conditions. Personnel costs and incidental expenses shall include but are not limited to Fire and Police personnel, other City personnel and consultant costs, inspection and reinspection fees, costs incurred in preparation of notices, preparation of specifications and contracts required to abate any nuisances arising from violations of these special conditions, and attorneys fees and costs incurred in enforcing these special conditions.